FILE COPY

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1946

No. 672

SOEWAPADJI and 218 alien Indonesian Seamen similarly situated,

Petitioners,

vs.

I. F. WIXON, as Custodian of Petitioners in the United States,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioners Soewapadji and 218 alien Indonesian seamen respectfully allege:

A.

SUMMARY STATEMENT OF MATTER INVOLVED.

The petitioners are all subjects of the Kingdom of The Netherlands and resident on the Island of Java in the Dutch East Indies. Their names are contained in a stipulation concerning parties (Tr. p. 12ff), but subsequent to the stipulation, Jan Allie, Samat Suker, Matheos Bin Bio, Ismail Boki, Saleh Nampiro, Supidin Pati and Selan Bin Abduldjalil directed the dismissal of their appeal to the Circuit Court of Appeals, and are no longer petitioners in this proceeding. The petition therefore involves 219 Indonesian seaman all similarly situated. They were all members of the crews of Dutch or British vessels and have refused to serve on such vessels for the reason that the Indonesians are in revolt against the Kingdom of The Netherlands, which latter is being assisted by the British in suppressing this revolt. The Indonesians, however, have established an independent government which is not yet recognized and the petitioners in this case are regarded by the Kingdom of The Netherlands as having engaged in treasonable activities.

The petitioners came to the United States as seamen on Dutch and British vessels, and upon arrival in various ports of the United States left their vessels and refused to serve further. In the case of many of the petitioners, if not all, the Immigration and Naturalization Service of the United States granted periods of time, upon the expiration of which the petitioners were to leave the United States or face deportation.

All of the petitioners have overstayed their leave and warrants of deportation in the case of each of them have been issued after hearings fair on their face. Under normal conditions and in the absence of the special circumstances set forth in the petition for the writ of habeas corpus filed in the District Court of the United States for the Northern District of California, Southern Division (Tr. pp. 3, 4 and 5), all of the petitioners would be clearly deportable as merchant seamen who have overstayed their visiting period, after the expiration of which their presence in the United States became unlawful.

The order to show cause (Tr. p. 8) was issued June 12, 1946, and served on the respondent, I. F. Wixon, as District Director, Immigration and Naturalization Service, Department of Justice, in whose custody petitioners then were, a few minutes before the vessel, "SS Marine Lynx" was to leave the port of San Francisco with all of the petitioners on board to be deported to Java. As soon as the order to show cause was served on the respondent, he caused all of the petitioners to be removed from said vessel and detained them in his custody at the Receiving Station at 630 Sansome Street, in the City and County of San Francisco, State of California.

Upon the return of the order to show cause, June 13, 1946, the District Court discharged the order and dismissed the petition for the writ. (Tr. p. 11.)

The same day notice of appeal to the Circuit Court of Appeals for the Ninth Circuit was filed (Tr. p.

11), and thereafter respondent, I. F. Wixon, petitioned said Circuit Court of Appeals for an order permitting him to remove all of the petitioners to an immigration camp maintained by the Immigration and Naturalization Service at Crystal City, Texas. By special order of the Attorney General, respondent I. F. Wixon was appointed custodian of the persons of the petitioners anywhere in the United States and in his new capacity was substituted as respondent in place of I. F. Wixon, District Director, Immigration and Naturalization Service, Department of Justice. (Tr. p. 28.) Thereafter, the Circuit Court of Appeals for the Ninth Circuit made an order authorizing said respondent to remove all of the petitioners to an immigration camp maintained by the Immigration and Naturalization Service at Crystal City, Texas, where they now are.

On the 13th day of September, 1946, the Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court (Tr. p. 33) and on the 9th day of October, 1946, the said Court made an order staying the mandate until the 9th day of November, 1946, provided petitioners within the period of said stay should file their petition for certiorari in the Supreme Court. (Tr. p. 34.)

B.

JURISDICTION.

The jurisdiction of this Court rests on § 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C. § 347.)

C.

STATUTES AND REGULATIONS INVOLVED.

Pertinent Provisions of the Immigration Laws:

Section 213, Title 8, *U.S.C.A.*

"No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent; * * *."

Section 214, Title 8, *U.S.C.A.*

"Any alien, who at any time after entering the United States is found to have been at the time of entry not entitled under this chapter to enter the United States, or to have remained therein for a longer time than permitted under this chapter, or regulation made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 155 and 156 of this Title * * *."

Section 215, Title 8, *U.S.C.A.*

"The admission to the United States of an alien excepted from the class of immigrants by Clause * * * (5) * * * of Section 203 of this Title * * *

shall be for such time and under such conditions as may be by regulations prescribed * * *."

Section 203, Title 8, *U.S.C.A.*

"When used in this chapter the term 'immigrant' means any alien departing from any place outside the United States destined for the United States except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman * * *."

Section 155, Title 8, *U.S.C.A.*

Describes what aliens shall be deported.

Section 156, Title 8, *U.S.C.A.*

Describes the method of deporting aliens illegally in this country.

Section 120.2, Title 8, *U.S.C.A.*

"As used in Section 3(5) of the Immigration Act of 1924 (Section 203, Title 8, U.S.C.A.), the term (bona fide alien seaman) means any alien who, in good faith, is signed on the articles of a vessel arriving at a port of the United States from any place outside thereof, employed in any capacity on board such vessel, and seeking to enter the United States temporarily solely in the pursuit of his calling as a seaman, with the intention of departing with the vessel or reshipping on board any other vessel for any foreign port or place."

Section 120.21 (2), Title 8, *U.S.C.A.*

"Any alien who, upon arrival, establishes that he is a bona fide seaman, as defined in section 120.2

of this part, is admissible as a non-immigrant under section 3(5) of the Immigration Act of 1924, and is not inadmissible under the other provisions of this part and of part 175, may be temporarily admitted for such period of time as the examining immigrant inspector shall designate, not to exceed, however, the time the vessel on which the alien arrives remains in the United States, and in no event to exceed twenty-nine (29) days. * * *"

United States Constitution, Amendment VIII: "Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishment inflicted".

United States Constitution, Amendment IX: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

D.

QUESTIONS PRESENTED AND REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The question presented is whether or not the special circumstances which exist in this case create a situation where the writ of habeas corpus should be granted even though, in the absence of these circumstances, the writ is customarily and properly denied.

These special circumstances are set forth in the petition in paragraphs III, IV and V thereof (Tr. pp. 3, 4, 5) from which we quote as follows:

"III

"* * * That the aliens hereinabove named are under warrant of deportation to Madoera, Netherlands East Indies; that your petitioner is informed and believes and upon such information and belief alleges the fact to be that said aliens are to be deported on the vessel 'Marine Lynx' from the Port of San Francisco tomorrow morning, June 13, 1946; that Madoera, Netherlands East Indies, is controlled by the British and Dutch Governments, as are other seaports of Java; that said Indonesian petitioners abovenamed are being deported for refusal to man Dutch or British ships sailing to Indonesia, and that to man said ships would be for these aliens an act of treason to the Government of the Republic of Indonesia to whom they are subject and to which said aliens now claim allegiance; that to deport the said aliens at this time to the Netherlands East Indies would be a violation of human rights and cruel and unusual punishment, and a violation of the United States Constitution and of the fundamental principles of the American policy of giving political asylum to the members of a race struggling to establish their own form of government and to free themselves from colonial exploitation, in that if said aliens are disembarked in the Netherlands East Indies they will be arrested as disloyal and traitorous to The Netherlands Government and subjected to severe punishment and possible execution.

"IV

"That said aliens have substantially complied with the spirit of the Immigration Laws, which

said laws were never made for the purpose of requiring aliens to engage in activities which result in the suppression of their own people by an imperialistic power; that at the present time very unusual conditions exist, in that the people of Indonesia and particularly of Java have declared their independence of the Dutch Government and recognize their own independent government. For this reason the aliens state that they should be allowed to remain in the United States until the situation in the Dutch East Indies has clarified itself and until the Indonesian Republican movement is recognized; and that during the time they remain in the United States they should be allowed to make a living here. Said aliens allege that they should be allowed to work in the United States not only to support themselves but to support their families.

"V

"That extension of temporary admission was improperly denied by the Immigration and Naturalization Service and that not to extend temporary stay under the circumstances of this case where strict enforcement of the rules and regulations of the Department of Immigration and Naturalization means imprisonment and possible death, amounts to an abuse of discretion and a violation of American law and tradition under which this country is an asylum for political refugees whose only offense is that they have struggled for independence; * * *"

These are the special circumstances above referred to, and there is no denial in the record of the facts above set forth.

This case has great and far-reaching political implications. We have barely concluded a great world war, fought for the liberation of the peoples of the world from the tyranny and savagery of fascism. During the course of this war, and prior to our entrance therein, Winston Churchill and Franklin Roosevelt met on a vessel in the waters of the North Atlantic and there announced to the world that the principles for which the allied nations were fighting were embodied in the so-called "Atlantic Charter". It is provided in the third paragraph of the Atlantic Charter "that they (i.e., the contracting powers) respect the rights of all people to choose the form of government under which they will live."

Great Britain today is engaged in a world-wide effort to suppress every form of popular government. This is the case in India, in Greece, in Yugoslavia, and in Indonesia, where Great Britain, not hesitating to violate her solemn agreement, is rendering all possible assistance to the Dutch government in suppressing the effort of the Indonesians to "choose the form of government under which they will live". The United States, through its State Department and Department of Justice in this case, is likewise engaged in violation of its solemn agreement and doing its bit through these deportation proceedings to give aid and comfort to the Dutch government in stifling the aspirations of its subjects for freedom, by handing over to that government these rebellious Indonesian seamen for punishment by imprisonment or death.

The questions before this Court are:

(a) Will it stay the hand of the Attorney General in his effort to hand the petitioners over to the Dutch Government so that they may be punished for daring to assert the rights solemnly guaranteed them by the United States and Great Britain under the terms of the Atlantic Charter?

(b) Will it correct the gross abuse of discretion on the part of the Attorney General in issuing deportation warrants where the almost certain consequences are death to the deported?

(c) Will this Court, in violation of the historic precedents of the United States, deny to petitioners the right of political asylum?

(d) Will this Court permit the use of the deportation process when the result of deportation is to inflict upon the deported cruel and unusual punishment?

The reasons relied on for the allowance of the writ are that, although some of the above questions have been presented to and decided in the negative by the lower courts, the Supreme Court has rendered no authoritative decision on the issues and questions presented by this petition.

These questions are of profound importance to all aliens who come in contact with the Department of Justice, and particularly to such of them as belong to colonial groups seeking independence from their imperialist masters. As a consequence of the just con-

cluded war for liberation and national freedom, colonial peoples everywhere are demanding that the imperialist powers live up to the representations and promises made for the purpose of soliciting and obtaining material assistance from the colonial peoples in the United Nations struggle against fascism. Colonial peoples are on the march for their independence, and the questions presented by this petition will become of ever increasing importance and should be decided by the Supreme Court.

Wherefore your petitioners pray that a writ of certiorari issue out of this Court to the Circuit Court of Appeals for the Ninth Circuit requiring that Court to certify and send to this Court a transcript of all the proceedings of such Circuit Court of Appeals for the Ninth Circuit had in this case; that the order and judgment of said Circuit Court of Appeals be reviewed and determined by this Court, and the order finally reversed and the cause remanded for further proceedings and further, that the petitioners be granted such other and additional relief as may be proper.

Dated, San Francisco, California,
October 30, 1946.

SOEWAPADJI AND 218 ALIEN INDONESIAN SEAMEN SIMILARLY SITUATED,
Petitioners,

By HAROLD M. SAWYER,
Their Counsel.

In the Supreme Court
OF THE
United States

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vs.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

JURISDICTION.

The jurisdiction of this Court rests on § 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. § 347.) The text of this statute is found in Appendix A of this brief.

II.

DATES OF ENTRY OF OPINIONS AND JUDGMENTS.

Judgment of the trial Court was entered on June 13, 1946. (Tr. pp. 10, 11.)

The opinion of the Circuit Court of Appeals for the Ninth Circuit was rendered and filed September 13, 1946. (Tr. p. 29ff.)

Judgment of the Circuit Court of Appeals was entered September 13, 1946. (Tr. p. 33.)

No petition for rehearing was filed.

III.

STATEMENT OF FACTS.

The petitioners are all subjects of the Kingdon of The Netherlands and resident on the Island of Java in the Dutch East Indies. Their names are contained in a stipulation concerning parties (Tr. p. 12ff), but subsequent to the stipulation, Jan Allie, Samat Suker, Matheos Bin Bio, Ismail Boki, Saleh Nampiro, Supidin Pati and Selan Bin Abduldjalil directed the dismissal of their appeal to the Circuit Court of Appeals, and are no longer petitioners in this proceeding. The petition therefore involves 219 Indonesian seaman all similarly situated. They were all members of the crews of Dutch or British vessels and have refused to serve on such vessels for the reason that the Indonesians are in revolt against the Kingdom of The Netherlands, which latter is being assisted by

the British in suppressing this revolt. The Indonesians, however, have established an independent government which is not yet recognized and the petitioners in this case are regarded by the Kingdom of The Netherlands as having engaged in treasonable activities.

The petitioners came to the United States as seamen on Dutch and British vessels, and upon arrival in various ports of the United States left their vessels and refused to serve further. In the case of many of the petitioners, if not all, the Immigration and Naturalization Service of the United States granted periods of time, upon the expiration of which the petitioners were to leave the United States or face deportation.

All of the petitioners have overstayed their leave and warrants of deportation in the case of each of them have been issued after hearings fair on their face. Under normal conditions and in the absence of the special circumstances set forth in the petition for the writ of habeas corpus filed in the District Court of the United States for the Northern District of California, Southern Division (Tr. pp. 3, 4, 5), all of the petitioners would be clearly deportable as merchant seamen who have overstayed their visiting period, after the expiration of which their presence in the United States became unlawful.

The order to show cause (Tr. p. 8) was issued June 12, 1946, and served on the respondent, I. F. Wixon, as District Director, Immigration and Naturalization

Service, Department of Justice, in whose custody petitioners then were, a few minutes before the vessel, "SS Marine Lynx" was to leave the port of San Francisco with all of the petitioners on board to be deported to Java. As soon as the order to show cause was served on the respondent, he caused all of the petitioners to be removed from said vessel and detained them in his custody at the Receiving Station at 630 Sansome Street, in the City and County of San Francisco, State of California.

Upon the return of the order to show cause on June 13, 1946, the District Court discharged the order and dismissed the petition for the writ. (Tr. pp. 10, 11.)

The same day notice of appeal to the Circuit Court of Appeals for the Ninth Circuit was filed (Tr. p. 11), and thereafter respondent, I. F. Wixon, petitioned said Circuit Court of Appeals for an order permitting him to remove all of the petitioners to an immigration camp maintained by the Immigration and Naturalization Service at Crystal City, Texas. By special order of the Attorney General, respondent I. F. Wixon was appointed custodian of the persons of the petitioners anywhere in the United States and in his new capacity was substituted as respondent in place of I. F. Wixon, District Director, Immigration and Naturalization Service, Department of Justice. (Tr. p. 28.) Thereafter, the Circuit Court of Appeals for the Ninth Circuit made an order authorizing said respondent to remove all of the petitioners to an immigration camp

maintained by the Immigration and Naturalization Service at Crystal City, Texas, where they now are.

On the 13th day of September, 1946, the Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court (Tr. p. 33), and on the 9th day of October, 1946, the said Court made an order staying the mandate until the 9th day of November, 1946, provided petitioners within the period of said stay should file their petition for certiorari in the Supreme Court.

IV.

ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals for the Ninth Circuit erred in the following respects:

(1) In failing to hold that the deportation warrants were void because of an abuse of discretion on the part of the Attorney General in that he issued the warrants notwithstanding the fact that the consequences of deportation to the deported were certain imprisonment and probable execution.

(2) In denying petitioners the right of political asylum.

(3) In permitting the use of the deportation process when the result of deportation is to inflict upon the deported cruel and unusual punishment.

(4) In failing to grant the prayer of the petition and release petitioners upon writs of habeas corpus.

V.

ARGUMENT.

FIRST ASSIGNMENT OF ERROR: FAILURE TO HOLD THAT THE DEPORTATION WARRANTS WERE VOID BECAUSE OF AN ABUSE OF DISCRETION ON THE PART OF THE ATTORNEY GENERAL IN THAT HE ISSUED THE WARRANTS NOTWITHSTANDING THE FACT THAT THE CONSEQUENCES OF DEPORTATION TO THE DEPORTED WERE CERTAIN IMPRISONMENT AND PROBABLE DEATH.

It is petitioners' position that the Attorney General was guilty of a gross abuse of discretion in issuing deportation warrants when the execution of these warrants means certain imprisonment and possible execution of the petitioners. Petitioners freely concede that if the execution of the warrants meant merely some financial or other hardship and did not involve deprivation of liberty and life, there would, in view of the fact that the proceedings before the Immigration and Naturalization Service were fair on their face, be no ground upon which writs of habeas corpus could issue.

The special circumstances of this case, however, take it out of the general rule. These circumstances are set forth in the petition (Tr. pp. 3, 4, 5) and have been recited both in the petition for certiorari and in this brief. There is no effort on the part of respondent to contradict in the slightest degree the allegations of the petition in this regard. The special circumstances therefore are on the record admitted to exist.

In this connection we refer to the case of *United States v. Uhl,* 20 Fed. Supp. 928. This case arose

upon an order to show cause why a writ of habeas corpus should not be issued. In this case, as in the case of the petitioners, there was no question raised as to illegal entry or the right to deport. The sole question was whether or not an alien unlawfully in the United States has a right when deportation is sought, to voluntarily deport himself to a country of his choice or whether the Commissioner of Immigration is vested by statute with authority to select the country to which he shall be deported.

The alien wished to be deported to Canada rather than to Poland, where he alleged he was liable to execution for political crimes.

The Court found, "There is no substantial suggestion here that the relator is liable to execution upon his return to Poland for any political crime or reason".

The significant part of the opinion, however, is contained in the following language:

> "However much the court may differ from the Secretary of Labor as to the place to which deportation should be made, it is not a subject for review by the court *unless, perhaps, where it was made clear after the order of deportation was issued that deportation to the country named in the order would almost certainly mean death to the alien guilty only of political crimes and even then the interference could only be justified upon the ground that the Secretary of Labor was guilty of such gross abuse of discretion as to raise a question of law.*" (p. 930.) (Emphasis added.)

The clear inference from this case is that if it had been established that deportation of the petitioner to Poland would have resulted in his execution for a political crime committed in Poland, the Court would have held the issuance of a warrant of deportation under such circumstances constituted an abuse of discretion so gross that the Court would be justified in granting relief to the petitioner.

That is precisely the situation in the case of these Indonesian petitioners. Unlike the *Uhl* case, supra, it *does* appear here that there is very real reason to believe that the execution of these deportation warrants will entail certain imprisonment and probable execution of petitioners. This, says the Court in the *Uhl* case, is an abuse of discretion so gross as to raise a question of law and to entitle the petitioner to release on habeas corpus.

SECOND ASSIGNMENT OF ERROR: DENIAL OF PETITIONERS' RIGHT OF POLITICAL ASYLUM.

The Circuit Court of Appeals for the Ninth Circuit held that aliens illegally in the United States have no right of asylum therein. For this position reliance is placed upon *Ex parte Kurth,* 28 Fed. Supp. 258, and *Glikas v. Tomlinson,* 49 Fed. Supp. 104.

That there was historically a right of political asylum in the United States cannot be successfully denied. Even in *Ex parte Kurth,* supra, Judge Yankwich conceded this fact. But his contention is that

the policy of restrictive immigration adopted after the Civil War in effect abolished the right of aslyum.

Even though the constitutionality of statutes restricting immigration have been upheld by the Supreme Court, it nevertheless is true that that Court has not yet ruled that a political refugee must, through the process of deportation, be condemned to imprisonment and death for political crimes committed in the country to which he is to be deported. There may not be any general right of asylum, but there certainly was historically such a right and it should be recognized where its denial means death to the political refugee.

The contention was made in this case that the right of asylum having once existed, it was not within the competence of Congress to destroy that right, and in support of this contention reliance was had on the Ninth Amendment to the Constitution of the United States, which reads as follows:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

In answer to this argument, Judge Yankwich, completely disregarding the language of the Constitution, said:

> "The Constitution of the United States is not a statute. It does not confer any rights except in the instances where those rights are specifically enumerated." (p. 264.)

Judge Yankwich therefore completely emasculated the Ninth Amendment.

The argument in support of the second assignment of error, like the argument on all the assignments, is predicated upon the special circumstances existing in this case, namely, that deportation means imprisonment and death to the deported.

THIRD ASSIGNMENT OF ERROR: PERMITTING THE USE OF THE DEPORTATION PROCESS WHEN THE RESULT OF DEPORTATION IS TO INFLICT UPON THE DEPORTED CRUEL AND UNUSUAL PUNISHMENT.

Until the decision of this Court in the case of *Bridges v. Wixon,* 326 U. S. 135, 89 L. Ed. 2103, the general rule was that inasmuch as deportation is not a criminal proceeding, no question of punishment is involved and therefore the Eighth Amendment to the Constitution forbidding the imposition of cruel and unusual punishment, is not applicable to a deportation case. But in *Bridges v. Wixon,* supra, Mr. Justice Murphy, in his concurring opinion, stated:

> "It is no answer that a deportation proceeding is technically non-criminal in nature and that a deportable alien is not adjudged guilty of a 'crime'. Those are over-subtle niceties that shed their significance when we are concerned with safeguarding the ideals of the Bill of Rights. The impact of deportation upon the life of an alien is often as great if not greater than the imposition of a criminal sentence. A deported alien may lose his family, his friends and his livelihood for-

> ever. Return to his native land may result in poverty, persecution and even death. * * *" (326 U. S. at p. 163; 89 L. Ed. at p. 2120.)

The view of the Supreme Court today, or at least the view of Mr. Justice Murphy, is, therefore, that notwithstanding the non-criminal character of deportation proceedings, deportation can be the equivalent of punishment. Hence the Eighth Amendment does apply and deportation should not be resorted to when the effect of the execution of the warrant is to inflict imprisonment or death upon the deported.

There is, as far as we know, only one case in the Federal Reports that passes directly upon this issue, namely, that deportation can be the equivalent of the infliction of cruel and unusual punishment, and when this is the case the petitioner will be released on a writ of habeas corpus.

In *In re Weinberg,* 26 Fed. Supp. 283, the facts were as follows: A warrant of deportation had been issued because at the time of entry of the alien into the United States he was not in possession of an unexpired immigration visa. The alien was a Jew and he was about to be deported to Czechoslovakia. The period of time involved was 1938. As in the case of these Indonesian petitioners, the alien in the *Weinberg* case was clearly deportable. In both cases the proceedings were fair on their face, and if the situation had been a normal one and no special circumstances had existed, there would have been no basis for the issuance of a writ of habeas corpus.

However, the writ did issue and the alien was discharged from custody of the Immigration and Naturalization Service. We quote from the opinion of Sullivan, District Judge (at page 284):

> "It is a matter of common knowledge that at the present time in Central Europe the Jews are being persecuted, their property confiscated and that they are obliged to seek sanctuary in other countries.
>
> Under conditions as they now exist it would be cruel and inhuman punishment to deport this petitioner to Czechoslovakia, belonging as he does to the race which is thus being persecuted and exiled, especially when the charge against him is that at the time of his entry into the United States he was not in possession of an unexpired immigration visa. I do not believe that the immigration laws contemplate any such strict compliance with the letter thereof, as would oblige the court to return at this time a Jew to a country where his property would be confiscated, where his life might be in jeopardy, and from which, if he were permitted to enter it at all, he would be forced immediately to flee.
>
> The prayer of the petition for habeas corpus is granted, the petition is sustained, and petitioner discharged from custody."

In the *Weinberg* case the writ issued to save an alien from racial persecution, and in the case of these appellants the writ is sought to save them from political persecution. There is in fact, however, no distinction between the two cases and persecution is

persecution with all of its attendant results, whether predicated upon a difference in race or upon political activity. The principle involved is precisely the same and the consequences to the individual are no different in the one case than they are in the other.

FOURTH ASSIGNMENT OF ERROR: FAILURE TO GRANT THE PRAYER OF THE PETITION AND RELEASE PETITIONERS UPON WRITS OF HABEAS CORPUS.

This is a conclusion drawn from the arguments made with respect to the other assignments of error. It rests upon the premise that to deport a person to a place where he will suffer persecution because of race, confiscation of property, imprisonment or death, is cruel and unusual punishment, and the deportation of persons who will suffer like consequences by reason of political activity or views is governed by the same principle. We cannot believe that the immigration laws were ever designed to permit deportation where the consequences to the persons deported are persecution, confiscation of property, imprisonment or death. The writ of habeas corpus is the proper method of testing the validity of a deportation order when such consequences will follow its execution, and the writ should have been issued by the Circuit Court of Appeals.

VI.

CONCLUSION.

This Court holds in its hands the fate of these Indonesian petitioners. That is the real issue in this case which cannot be obscured by the sophistry that, because the deportation proceedings and hearings were fair on their face, there is no ground for the issuance of the writ, regardless of the consequences to the deported.

We are not in this case dealing with aliens who have been accused of moral turpitude or of any crime. The technical offense upon which the warrants of deportation are based, is that, having overstayed their leave as merchant seamen, they are illegally in the United States. But why did they overstay their leave? Because they refuse to sail on British and Dutch vessels loaded with arms, munitions of war, and troops for the suppression of the fight for Indonesian independence. They refuse to assist the imperialist Dutch Government in an effort to suppress a revolution fought by their brothers and friends to secure freedom. It was in just such a struggle that this Country was born. Can it be that this Court will permit the use of the immigration laws for the purpose of enabling the Dutch Government to punish its rebellious subjects? Will this Court send these Indonesian seamen, whose only offense is support of a struggle for Indonesian freedom, back to Java and certain persecution if not death? Will this Court permit the use of the immigration laws for the purpose of indirectly cooperating with the Dutch and British in their effort to destroy Indonesian freedom?

It was said by the respondent in the Circuit Court of Appeals that for the Court to grant the writ of habeas corpus in this case it would have to transcend its powers and usurp the powers of other branches of the government. On the contrary, all that the Court will be doing in issuing its writ of habeas corpus in this case is declaring that the gross abuse of discretion on the part of the Attorney General in issuing deportation warrants where the almost certain consequences are death to the deported, renders the warrants void even though fair on their face. No such legalism as "fair on their face" should obscure the real issues, and it is respectfully submitted that the writ of habeas corpus should issue and that all of the petitioners should be discharged from custody.

Dated, San Francisco, California,
October 30, 1946.

Respectfully submitted,
HAROLD M. SAWYER,
Counsel for Petitioners.

GEORGE R. ANDERSEN,
GLADSTEIN, ANDERSEN, RESNER,
SAWYER & EDISES,
LEO GALLAGHER,
KATZ, GALLAGHER & MARGOLIS,
Of Counsel.

(Appendix A Follows.)

Appendix A

§347. (*Judicial Code, section 240, amended.*) *Certiorari to circuit courts of appeals and Court of Appeals of District of Columbia; appeal or writ of error to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed.* (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.